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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/676,980	10/01/2003	Fred D. Oberhaus	7349	7684
Paul M. Denk Ste. 170 763 S. New Ballas Road St. Louis, MO 63141			EXAMINER PUROL, SARAH L	
			ART UNIT 3637	PAPER NUMBER
			MAIL DATE 07/07/2010	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/676,980

Applicant(s)

OBERHAUS, FRED D.

Examiner

Sarah Puroi

Art Unit

3637

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 May 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 4-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 4-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/CD)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Prosecution on the merits is hereby reopened.

Claims 4-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jurasek '712 in view of Oberhaus et al. 6286691.

Jurasek teaches a free standing wire rack having end frames 23,24 and further having cross rods arranged horizontally thereon. Also shown is shelving 26,27. Vertical rods are shown and braces 31,32. The connecting sleeve is the ends of the vertical uprights.

Oberhaus teaches pressure fitting between the rack components. Col. 5 line 65-Col.6 line 15.

Specifically one side of the shelving will be installed at a juncture between the vertical support rod 16 and one of its affixed transverse support rods 18, and the shelf will be tilted, during its installation, and at such time, the other side of the shelf will then be forced downwardly, into a horizontal position, into the juncture between the opposite support rod 17, and the corresponding transverse rod 18, and under a biasing force pressured into its usable configuration, as shown in FIG. 12. Hence, once a shelf is installed, within its end frame, it will be snugly and pressure fitted therein, to add to the stability of the assembled shelving, for ready usage. And, due to the pressure fit of a shelf within its respective end frames, the shelving, once assembled, is fully integrated, and does not rattle or cannot be shaken loose, during usage, due to this pressure fit type of engagement of its various components when the shelving is assembled for installation.

To connect the rack components of Jurasek by pressure fitting as taught by Oberhaus for the purpose of an easy yet secure fitting would have been obvious for one having ordinary skill in the art at the time of the invention.

Claims 4-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Jurasek 3680712.

Jurasek teaches a free standing wire rack having end frames 23,24 and further having cross rods arranged horizontally thereon. Also shown is shelving 26,27 pressure biased against the horizontal cross rods.

Column 8, lines 36-66.

To assemble the uppermost rack section 12, the side frames 16 and 17 are first disposed in vertical, opposed, facing relationship, whereupon the shelves 18 or 19 are then mounted on the side frames 16 and 17 for fixedly and rigidly interconnecting same. Particularly, the legs 61 and 62 of the shelf 18 will be positioned above and outwardly of the intermediate support rods 38A and 38B, the shelf 18 being positioned so that the legs extend substantially vertically downwardly until the bent portions 66 of the legs, particularly the chamfered faces 67 thereof, contact the locking rods 41 and 42. Continued downward pressure exerted on the shelf 18 will cause the legs 61 and 62 to resiliently deflect

inwardly so as to permit the bent portions 66 of the legs to pass by the locking rods, whereupon the bent portions 66 will then resiliently snap outwardly so as to be positioned partially under the locking rods (as illustrated in FIG. 7) for resiliently holding the shelf tightly in engagement with the side frames 16 and 17. When so positioned, the weight of the shelf 18 is supported on the intermediate support rods 38A and 38B, whereas the bent portions 66 of the legs cooperate with the locking rods 41 and 42 for tightly and fixedly maintaining the shelf interconnected between the side frames. The shelves are disassembled in the reverse manner merely by exerting a sufficient upward force on the shelf so as to cause the legs to resiliently deflect inwardly to enable the bent portions 66 of the legs to move upwardly past their corresponding locking rods.

Vertical rods are shown and braces 31,32. The connecting sleeve is the ends of the vertical uprights.

Claims 4-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 14 line 11, there is no antecedent basis for "a shelving" and "a vertical rod". It appears the recitation should be --one of said at least one shelving -- and --one of said vertical rods.

Appellants submit that claims 4-14 are not obvious based on Jurasek '712 in view of Oberhaus, et al. '691, because:

On page 8 of the argument 10/5/09, line 16 "as explained in claim 4, each of the shelvings has a pair of end rods 16 and 17, that embrace the vertical rods 6 and 7 of the contiguous end frame, that adds further stability to the structured assembly" which appellant argues is not shown in either Jurasek '712 nor Oberhaus '691.

Appellant's argument is without merit in that the limitation of "embracement" is never claimed. Appellant is arguing a limitation which is not recited and therefore cannot be held to be persuasive.

It is the position of the examiner that the limitations which are recited have been rendered obvious over the combination of Jurasek '712 in view of Oberhaus '691.

Appellant further argues that claims 4-14 are not obvious based on Jurasek '712 in view of Oberhaus et al. '691, because:

On page 8 of the argument last paragraph "A claim such as claim 14, and its dependent claim 4, identifies further structural definition that there is a forced pressure fit between the shelving, and the vertical rods, and through contact with each other, and the embracement of the vertical rods 6 and 7 by the shelving rods 16 and 17, at each end of the rack, as a forced pressure fitting between these components"

Again, appellant's argument is without merit in that there is no recitation of "forced pressure fit" or "embracement" in the claims. Furthermore no alleged further structural definition is positively identified in the claims. Furthermore; it is submitted that the limitations that are recited have been met by Jurasek '712, alone and in view of Oberhaus et al. as recited in the above rejections, the wording of which was taken directly from the body of the patents as indicated.

It is submitted by the examiner, that to argue limitations which are not claimed is not persuasive. Furthermore, it is the position of the examiner, that to argue the invention generally without pointing to specific claim language is also not persuasive.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sarah Purol whose telephone number is 571-272-6834. The examiner can normally be reached on Monday -Thursday during normal business hours.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Darnell M. Jayne, can be reached on 571-272-7723. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Sarah Purol/

Primary Examiner

AU 3637